

AG Contract No.: KR04-0921TRN
ADOT ECS File No.: JPA 04-053
Project No.: HRF-YYV-0-804
Project: Willow Creek Road
TRACS No.: HF104 01C
Budget Source Item No.: N/A
HURF Exchange Program

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
YAVAPAI COUNTY, ARIZONA

THIS AGREEMENT is entered into 20th August, 2004, pursuant to Arizona Revised Statutes § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and YAVAPAI COUNTY, ARIZONA, acting by and through its Board of Supervisors (the "County").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 and § 28-6993(g) to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The County is empowered by Arizona Revised Statutes § 11-251 and § 11-951 and to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the County.

3. The State has approved the exchange of \$220,000.00 in Highway User Revenue Funds (HURF) in Fiscal Year 2004 to the County for the construction of roadway improvements to Willow Creek Road, and such funds will be repaid to the State by withholding from the Northern Arizona Council of Governments (NACOG) federal funds and the obligation authority for federal funds in the amount of \$228,210.00 in Fiscal Year 2004.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 27019
Filed with the Secretary of State
Date Filed: 08/20/04

Janice K. Brewer
Secretary of State

By: Danny V. Graenewald

II. SCOPE OF WORK

1. The County will:

a. Provide design plans, specifications and such other documents and services required for the improvements contemplated for Willow Creek Road, construction bidding and construction.

b. Call for bids and award one or more construction contracts for the project. Administer same, and make all payments to the contractor(s). Be responsible for any additional funds required to complete the project, and for any contractor claims for extra compensation due to delays or whatever reason. Comply with all applicable State laws, rules and regulations.

c. Invoice the State for thirty percent of the project construction cost, at the start of construction.

d. Invoice the State for thirty percent of the project construction cost, at the thirty percent and sixty percent project construction completion stages.

e. Upon completion, approve and accept the project as complete and provide maintenance. Provide the State with a letter documenting the notice of the approval and acceptance of the project.

f. Invoice the State for the remaining ten percent of the project construction cost at the one hundred percent project construction completion stage, after the County, NACOG, and the State (ADOT) representatives have completed final project review.

2. The State will:

a. Within 30 days after receipt of a letter confirming the construction project has been awarded, advance the County thirty percent of the HURF funds.

b. Within 30 days after receipt and approval of construction invoices at the sixty and ninety percent construction completion stages, advance the County HURF funds in the amount of thirty percent at each invoiced stage for construction.

c. Within 30 days after receipt and approval of construction invoices for the remaining ten percent of the project construction, advance the County HURF funds in the final ten percent amount of the \$220,000.00 for construction.

d. Withhold from NACOG, federal funds and the obligation authority of federal funds \$228,210.00 in fiscal year 2004 for construction.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction project. The County, in regard to the County's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. The County shall require its contractors to name the State and ADOT as an additional insured in the contractor's policies. The County shall also require its contractors to name the State and ADOT as an additional indemnitee in the County's contracts with its contractors. It is understood and agreed that the State's participation is confined solely to advancing highway user revenue funds; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the County and that to the extent permitted by law, the County hereby agrees to save and hold

harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, the County, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

2. This terms, conditions and provisions of this Agreement shall remain in force and effect until completion of said project, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon thirty (30) days written notice to the other party. It is understood and agreed that, in the event this Agreement is terminated by the County, the State shall in no way be obligated to maintain said project.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ. 85007
FAX (602) 712-7424

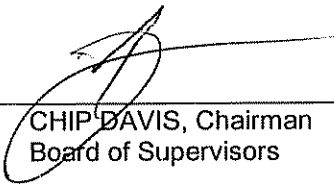
Yavapai County
Transportation Planning Engineer
1100 Commerce Drive
Prescott, Arizona 86305


10. Pursuant to Arizona Revised Statutes, Section 11-952 (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

YAVAPAI COUNTY

STATE OF ARIZONA
Department of Transportation

By 
CHIP DAVIS, Chairman
Board of Supervisors

By 
DALE BUSKIRK, Division Director
Transportation Planning Division

ATTEST

By 
BEV STADDON
Clerk of the Board

**CERTIFIED COPY OF ENTRY IN OFFICIAL MINUTES
OF THE YAVAPAI COUNTY BOARD OF SUPERVISORS**

YAVAPAI COUNTY)
) ss.
ARIZONA)

Bev Staddon, having been first duly sworn, deposes and says:

I am the duly appointed, qualified and acting Clerk of the Yavapai County Board of Supervisors and in such capacity under the provisions of ARS §11-241 am charged with the responsibilities, among others, of recording all proceedings of the Board and maintaining custody of such records of the Board as are required by law to be maintained. Among the records of which I have custody is the official minute book of the Board of Supervisors which under the provisions of ARS §11-217 is required to be made and kept.

Set forth below is a copy of an entry in the aforesaid minute book of which, as aforesaid, I am the officer having the legal custody. This is my certificate under the provisions of Rule 44(A), Rules of Civil Procedure, and the Uniform Business Records Act, that the said copy is a true and correct copy thereof, to which I attest by my signature subscribed hereunto:

Date of meeting of which the minutes are a record: July 19, 2004.

The entry in the said minutes:

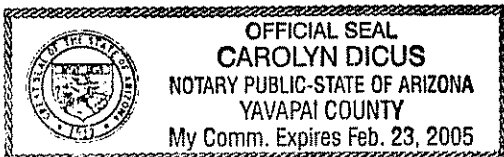
Discussion and possible approval of Intergovernmental Agreement JPA 04-053 with the State of Arizona for the receipt and expenditure of \$220,000 of Highway User Revenue Funds (HURF) for the reconstruction of a portion of Willow Creek Road, with a cash match of \$11,000 paid from Regional Road Fund. Approved by unanimous vote. Motion by Supervisor Brownlow, second by Supervisor Street. No comments from the public.


Bev Staddon, Clerk

SUBSCRIBED AND SWORN to before me August 2, 20 04.

My Commission Expires:

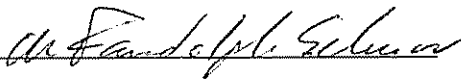

Notary Public



APPROVAL OF THE YAVAPAI COUNTY ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the YAVAPAI COUNTY, an agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the COUNTY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 25th day of July, 2004.



County Attorney



TERRY GODDARD
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855


INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR04-0921TRN (**JPA 04-053**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: August 16, 2004

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section